

SPECIAL USE PERMIT

FILE NO.	SP22-025 & ER22-190
LOCATION OF PROPERTY	Southwest corner of North 1st Street and Devine Street (227 North 1st Street, APNs 259-33-058, 259-33-059 and 259-33-060)
ZONING DISTRICT	DC Downtown Primary Commercial
GENERAL PLAN DESIGNATION	Downtown
PROPOSED USE	Special Use Permit to allow the re-use of a historic landmark structure (City Landmark No. 19 – Moir Building) as a private secondary school on an approximately 0.5-gross-acre site.
ENVIRONMENTAL STATUS	Addendum to the Downtown Strategy 2040 Final Environmental Impact Report adopted by City Council Resolution No. 78942 on December 19, 2018
OWNER ADDRESS	227 N. FIRST STREET LLC 777 North 1st Street, 5th floor San Jose, CA 95112
APPLICANT ADDRESS	Mark Silver Hillbrook School 300 Marchmont Drive Los Gatos, CA, 95032

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

1. **Project Description.** Special Use Permit to allow a private school use of a 27,705-square-foot City Landmark Structure (the "Moir Building") on an approximately 0.5-gross-acre site located on the southwest corner of North 1st Street and Devine Street (227 North 1st Street) for a maximum of 300 students and 45 staff members who will be distributed between the Moir Building and the Armory Building, a 21,164-square-foot landmark structure located one block east of the subject site at 240 North Second Street. Re-use of the Armory by Hillbrook School has been approved separately under File No. SP22-021.

School parking will be provided in the existing parking lot on the subject site and an additional 16 spaces will be leased at the Park Townsend apartments located one block away at 46 West Julian Street. To support pedestrian and bicycle circulation as well as transit ridership, the school will implement a number of transportation demand management (TDM) strategies, such as shuttles to and from Diridon Station, school bus service, and transit subsidies, as well as carpooling and onsite bicycle parking and repair facilities.

2. **Site Description and Surrounding Uses.** The subject site is currently developed with the Moir Building, a three-story City Landmark building constructed in 1892, and a surface parking lot with 28 parking spaces, accessible from Devine Street. Surrounding uses include a two-story commercial building and a five-story multifamily residential building to the north, and the eight-story court building to the west and south. The entire city block to the east is mostly undeveloped except for the First Church of Christ Scientist, a vacant building that is a contributing structure to the St. James Square City Landmark District.
3. **General Plan Conformance.** The subject site is designated **Downtown** on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan, which allows a floor area ratio (FAR) up to 30.0 (3 to 30 stories). The Downtown designation is the primary designation for new high-intensity office, retail, service, residential, and entertainment uses in the Downtown area. All development within this designation should enhance the "complete community" in Downtown, support pedestrian and bicycle circulation, and increase transit ridership.

Analysis: Secondary school use of the property is consistent with the Downtown land use designation, which allows a broad range of commercial, residential, and institutional uses. The project does not include the construction of new floor area, and therefore the existing floor area ratio and height of three stories will be maintained. To support pedestrian and bicycle circulation as well as transit ridership, the school will implement a number of transportation demand management (TDM) strategies, such as shuttles to and from Diridon Station, school bus service, and transit subsidies, as well as carpooling and onsite bicycle parking and repair facilities. The project is therefore consistent with the General Plan land use designation.

The site is identified as a City Landmark Structure on the Historic Resources Inventory. Development of high-intensity residential or commercial uses at this site would not meet the City's goal to retain and enhance historic resources, but the Hillbrook School represents a low-intensity use that is compatible with preservation of the historic structure. The school will gradually grow enrollment over several years to a maximum of 300 students and 45 staff members who will be distributed between the Moir Building and the Armory Building, a 21,164-square-foot landmark structure located one block east of the subject site at 240 North Second Street. Re-use of the Armory by Hillbrook School has been approved separately under File No. SP22-021.

The project is consistent with the following key General Plan policies:

Policy ES-1.3: Encourage new schools, including public and private, to locate near populations which they serve.

Analysis: According to the Transportation Analysis prepared for the project by Hexagon Transportation Consultants, Inc. dated December 14, 2022, the highest concentration of students is expected to come from neighborhoods within an approximately five-mile radius of the campus, including Willow Glen, Rose Garden, and Naglee Park. While other significant areas of origin are at a greater distance, including northeast San Jose, Almaden, Los Gatos and Saratoga, the school's central location in downtown San Jose, with its regional transit connections, is well-located to serve students in southern Santa Clara County.

Policy ES-1.4: Encourage and enable new schools, public or private, to avoid locations that could pose health and safety risks to children (e.g., locations near industrial uses, hazardous material storage, and excessive noise).

Analysis: The Moir Building is located in a mixed-use neighborhood that includes institutional uses, office buildings, and residential apartment complexes constructed from the late 19th century to today. The predominant General Plan land use designations in the surrounding neighborhood are Downtown, Public/Quasi-Public, and Transit Residential, none of which permit industrial uses. A search of the Envirostor database found no nearby hazardous waste clean-up sites and there are no industrial uses or sites with hazardous material storage that would pose a risk to the students and staff.

Policy ES-1.7: Support efficient use of land through consideration of smaller school sites and alternative school configurations (e.g., multi-story buildings, underground parking, placement of recreation space over parking areas or on rooftops) to support the needs of each community.

Analysis: The project is the adaptive re-use of the Moir Building city landmark by Hillbrook School, a private secondary school. The Moir Building is a vacant three-story, 27,705-square-foot building on an approximately 0.5-gross-acre infill site. The first floor of the building will be used primary for administrative functions, while the second and third floors will house classrooms and labs. The site has an existing 28-space lot that will provide parking for the school, which includes the Moir Building and the Armory, a landmark building located one block away that will house additional classrooms, offices, and a gymnasium.. Additional parking will be provided at the Park Townsend apartment complex one block from the project site. With a distribution of classrooms and offices across two City Landmark structures in a Downtown location accessible to both local and regional transit, the project represents an alternative school configuration is consistent with the policy.

Policy LU-3.5: Balance the need for parking to support a thriving Downtown with the need to minimize the impacts of parking upon a vibrant pedestrian and transit oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.

Analysis: The project will not result in additional parking in the Downtown area. All of the parking being provided by the project is existing, including the 28 spaces in the Moir Building parking lot and 16 leased spaces at the Park Townsend Apartments located at 46 West Julian Street, one block from the project site. Moreover, the project will provide 216 bicycle parking spaces and bicycle repair facilities at the Moir Building and Armory sites. The project site is located along the Downtown San Jose Transit Mall. The St. James light rail station (Winchester and Santa Teresa lines) is located approximately 450 feet from the Moir Building, and multiple bus lines run on East Santa Clara Street, two blocks southeast of the project site. Regional transit is available at Diridon Station approximately 0.8 mile away.

Policy EC-1.3: Mitigate noise generation of new nonresidential land uses to 55 dBA DNL at the property line when located adjacent to existing or planned noise sensitive residential and public/quasi-public land uses.

Analysis: According to the project noise study produced by Illingworth & Rodkin, Inc. in January 2023, potential sources of noise generated by the school include traffic, parking, and students congregating outdoors at lunchtime. The only residential use adjoining the site

is located across Devine Street from the project's parking lot. However, there is no outdoor space on the Moir Building site. Therefore, any noise generated will occur during morning drop-off and afternoon pick-up hours and is not likely to exceed 55 decibels at the property line. Therefore, the project is consistent with this policy.

As established in the Envision San José 2040 General Plan, the City's acceptable exterior noise level objective is 60 dBA DNL or less for residential and most institutional land uses. According to the noise study produced for the project by Illingworth & Rodkin, Inc. in January 2023, the existing noise exposure for the exterior of the Moir Building is calculated to be 66 decibels, with noise primarily generated by local vehicular traffic, the light rail train, and airplanes. This noise level is expected to increase to 68 decibels once the school is operating, due to a minor increase in vehicle traffic. A sound level of 70 decibels is considered "conditionally acceptable" for schools with implementation of noise insulation features, per the Land Use Compatibility Guidelines in Table EC-1 of the General Plan. However, all school activities at the Moir Building will take place indoors. According to the noise report, interior measurements taken on the first and second floors of the building facing North 1st Street indicate that indoor noise levels when the school is operating will be in the range of 35 to 38 decibels, below the conditionally acceptable level and the 50-decibel threshold contained in the California Green Building Code.

The noise study also evaluated the potential impact on the school of the vibration generated by the light rail on First Street, which is located approximately 55 feet from the Moir Building. Vibration levels from six trains were measured ranging from 59 VdB to 64 VdB, which are below the Federal Transit Administration's (FTA) vibration limit of 75 VdB for frequent vibration events that affect institutional land uses with a primarily daytime use. Therefore, the project is consistent with this General Plan policy.

4. **Zoning Code Conformance.** The project site is located within the **DC Downtown Primary Commercial** Zoning District and is subject to the use and development regulations contained in Chapter 20.70 of the San José Municipal Code.

- a. Use: [Table 20-140](#) of the San Jose Municipal Code identifies "historic landmark structure re-use" as subject to a Special Use Permit in the Downtown Primary Commercial Zoning District. Additionally, "School, secondary – grades 9-12 (public or private)" is a use that requires a Conditional Use Permit in the DC Zoning District.

Analysis: The project can be reviewed under a Special Use Permit as it does not include alterations to the building exterior and there are no site changes.

- b. Height and Setbacks: Per Section 20.70.200 of the Zoning Code, properties located in the DC Zoning District shall only be subject to the height limitation necessary for the safe operation of San José International Airport, which is 315 feet according to the airport's website. Additionally, per Section 20.70.210 of the Zoning Code, the Downtown Primary Commercial District is not subject to setback regulations.

Analysis: The Moir Building has a height of 36 feet. The project does not include changes to the height or setbacks of the building and is therefore consistent with the development regulations.

- c. Parking: The project is subject to the City's parking ordinance in effect at the time the application was filed in July 2022. Pursuant to Table 20-140 of the San Jose Municipal Code, the required parking for secondary schools is as follows:

- i. Vehicle parking: The vehicle parking requirement is 0.75 off-street parking spaces per teacher and employee, plus one space per 10 students. At full capacity, the school will enroll 300 students with 45 faculty and staff members, resulting in a parking requirement of 64 spaces. Per SJMC Section 20.70.330 prior to the April 10, 2023 update, a 15% reduction may be considered for a project that implements transportation demand management (TDM) measures and a further 50% reduction may be considered pursuant to SJMC Section 20.90.220 if no development permit is required, the structure or use is located within 2,000 feet of an existing rail station, the structure or use provides bicycle parking in conformance with SJMC Table 20-190, and the project implements a TDM program with at least three of the measures listed.

Analysis: Pursuant to Table 20-140, the onsite parking requirement for the school (at the project site and the Armory) is 64 spaces, based on a maximum enrollment of 300 students and 45 faculty and staff members. The TDM Plan submitted by the applicant and dated November 22, 2022, which is included as a permit condition herein, contains infrastructural and programmatic TDM measures such as school bus service, last-mile shuttle service from Diridon Station, and transit subsidies for VTA and Caltrain. Many of the TDM measures that Hillbrook School will implement at the subject site are already in operation at the school's Los Gatos campus, which demonstrates the school's ability to maintain the TDM program for the life of the project. Therefore, the project is eligible for the 15% reduction in vehicle parking pursuant to SJMC Section 20.70.330, which reduces the parking requirement to 55 spaces. Furthermore, the project is eligible for an additional 50% reduction in parking spaces, as the project meets the required site conditions and its TDM Program includes three measures that are listed in Section 20.90.220, including a carpool program, transit use incentives, and the last-mile shuttle to Diridon Station.

As a result of the parking reductions, the number of required spaces is 28. The project will provide a total of 44 spaces: 28 on the project site and 16 leased spaces at the Park Townsend Garage located at 46 West Julian Street, approximately one block from the Moir Building. Thus, the project vehicle parking is consistent with the Zoning Code.

- ii. Bicycle parking: Per Table 20-190 of the Zoning Code, secondary school use (grades 9-12) is required to provide one bicycle space per 10 full-time employees plus 10 spaces per classroom. Furthermore, [Section 20.90.060.B](#) states: "When part or all of the bicycle parking spaces required for a land use is based on the number of full-time employees, that portion shall be provided in long-term bicycle parking facilities. When part or all of the bicycle parking spaces required for a land use is based on classrooms, that portion shall be provided in short-term bicycle parking facilities."

Analysis: With 45 employees and 15 classrooms, the project is required to provide a total of 155 bicycle parking spaces onsite. Of those, five are required to be long-term spaces, and 150 must be short-term spaces. Between the Armory site and the Moir Building site, the project will provide a total of 216 bicycle parking spaces, of which six will be long-term and 210 will be short-term, consistent with the Zoning Code.

5. **Historic Preservation.** The site is listed on the City's Historic Resources Inventory as a designated City Landmark. The project is evaluated for consistency with the Historic Landmark Structure Re-use Findings in Section 10 below.
6. **City Council Policy Consistency.** Under City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals, the project is considered to be a standard project. Standard development projects are required to provide early notification by website, email, postcard mailed to property owners and tenants within a 500-foot radius, and by onsite signage. Consistent with City's policy regarding onsite posting, the onsite sign has been posted at the site since October 26, 2022, to inform the neighborhood of the project. Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. Staff has been available to respond to questions from the public.
7. **Environmental Review.** The environmental impacts of this project were addressed in an Addendum to the Downtown Strategy 2040 Final Environmental Impact Report adopted by City Council Resolution No. 78942 on December 19, 2018. CEQA Guidelines, Section 15164, states that, "A lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in CEQA Guidelines, Section 15162 calling for preparation of a subsequent EIR have occurred. Pursuant to Section 15164, and as part of the entitlement processing for this project, an Addendum to the Downtown Strategy 2040 Final EIR was prepared. The Addendum is available on the City's website at: www.sanjoseca.gov/activeeirs.

Analysis: The Hillbrook High School Project Addendum to the Downtown Strategy 2040 EIR analyzed the project to convert the Moir Building to secondary school use. The project consists only of interior renovation, mainly removal and construction of walls to reconfigure indoor spaces. The type and intensity of the project use and renovation are consistent with the anticipated development in the Downtown Strategy 2040 FEIR.

No new or more significant environmental impacts beyond those identified in the Downtown Strategy EIR have been identified, nor have any new mitigation measures or alternatives which are considerably different from those analyzed in the EIR been identified. The project will not result in a substantial increase in the magnitude of any significant environmental impact previously identified in the EIR. For these reasons, a supplemental or subsequent EIR is not required and an Addendum to the Downtown Strategy 2040 FEIR is the appropriate environmental clearance for the project.

8. **Special Use Permit Findings.** Chapter 20.100 of the San José Municipal Code establishes required findings for issuance of a Special Use Permit, as follows:
 - a. The special use permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies.

Analysis: As discussed in the General Plan Consistency above, the conversion of the Moir Building, a City Landmark, to a private high school use is consistent with the Downtown General Plan Land Use Designation. It also conforms to General Plan policies that encourage schools to locate on smaller and alternative sites that will not present health risks to students. Furthermore, the project is located within a transit-rich area and will implement multiple TDM strategies to discourage car use, including carpools/vanpools, shuttles to Diridon Station, and transit subsidies.

- b. The special use permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.

Analysis: The project is the re-use of a City Landmark building that will not include any exterior alterations. There will be no change to the building height, setbacks, and floor area ratio (FAR). In the Downtown Primary Commercial Zoning District, "historic landmark structure re-use" requires a Special Use Permit, while the secondary school use requires a Conditional Use Permit. However, because the project does not entail site changes or new exterior construction, it is being considered under a Special Use Permit. Additionally, the project will provide 28 onsite parking spaces and 216 bicycle parking spaces (onsite and at the Armory), consistent with the Zoning Code.

- c. The special use permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

Analysis: The project is subject to and conforms to Development Policy 6-30: Public Outreach for Pending Land Use and Development Proposals. The onsite sign has been posted at the site since October 26, 2022, to inform the neighborhood of the project. Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. Staff has been available to respond to questions from the public.

- d. The proposed use at the location requested will not:

- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area.
- ii. Impair the utility or value of property of other persons located in the vicinity of the site.
- iii. Be detrimental to public health, safety, or general welfare.

Analysis: The use is a secondary school with an anticipated enrollment of 20 students in the first year that will eventually grow to a maximum enrollment of 300 students distributed between the project site and the Armory one block away. According to the school's Operations Plan, the regular school day will be from 8:30 a.m. to 3:30 p.m. on weekdays, with smaller numbers of students and faculty onsite from 7:00 a.m. to 8:30 a.m. and 3:30 p.m. to 10:00 p.m. for extracurricular activities, administrative functions, and teacher preparation. Deliveries will be limited to the hours between 6:00 a.m. and 9:00 p.m. The school gymnasium is located on the ground floor of the Armory, so all physical education activities will take place indoors. Student drop-off and pick-up hours will be 7:30 a.m. to 8:30 a.m., and 3:00 p.m. to 4:00 p.m. and will take place in the Moir Building parking lot to minimize vehicle stacking on the street. The school also expects to hold occasional events for the school community between the hours of 7:00 a.m. and 10:00 p.m.

The project site is located within Downtown San José, a densely populated urban area with a wide range of land uses. Surrounding uses are a two-story commercial building and a five-story multifamily residential building to the north across Devine Street and the eight-story court building to the west and south. The entire city block to the west is mostly undeveloped except for the First Church of Christ Scientist, a vacant building that is a contributing structure to the St. James Square City Landmark District.

The project will result in interior improvements to the existing building. While noise will increase temporarily during the construction period, ongoing school activities will take place entirely within the Moir Building, except for student drop-off and pick-up times (7:30 a.m. to 8:30 a.m. and 3:00 p.m. to 4:00 p.m. on weekdays) in the onsite parking lot.

The local traffic analysis conducted for the project by Hexagon Transportation Consultants, Inc. and dated December 14, 2022, analyzed the school's expected impacts on traffic in the surrounding area. As discussed previously, Hillbrook School will employ a number of TDM measures to encourage school bus and transit mode share, including expansion of school bus routes, last-mile shuttles from Diridon Station, and transit subsidies for students and employees. Hexagon anticipates that these measures could reduce the number of students arriving via solo vehicle trips by as much as 50%. Furthermore, all student drop-off and pick-up activities will take place in the onsite parking lot; student drop-off or pick-up on adjacent streets will be prohibited and will be monitored by staff members positioned on First Street, Second Street, and Devine Street. Students and staff will circulate between the Moir Building and Armory campuses on foot.

The project will occupy a large City Landmark building that is currently vacant. The presence of a high school community that includes students, staff, and families will help to activate the neighborhood and contribute eyes on the street. According to the school's operations plan, the school will have security personnel on duty at all times and will employ other security measures such as video surveillance cameras and alarms to ensure the safety of students, staff, and the premises.

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area.

Analysis: The site has an existing parking lot with 28 spaces which will provide sufficient vehicle parking to comply with the Zoning Code. In addition, the school will lease 16 spaces at the Park Townsend apartments one block away, for a total of 44 spaces. As explained previously, the school will implement a TDM program with various measures aimed at encouraging alternative modes of transportation for students and employees.

Student drop-off and pick-up operations will take place entirely onsite in the Moir Building parking lot. According to the Hexagon report, vehicles will enter the parking lot at the west driveway, circulate through the parking lot to the drop-off and pick-up stations alongside the school building, and exit via the east driveway. To ensure that drivers follow this circulation pattern, project Condition 30 requires installation of an "EXIT ONLY" sign at the egress driveway.

The Hexagon report estimates that up to 12 vehicles will be able to queue onsite before vehicles would begin to extend into the sidewalk or Devine Street. Staff who use the Moir parking lot will be required to arrive at least 30 minutes before school begins and leave at least 30 minutes after school ends. Although queueing beyond the parking lot is not expected during the morning drop-off time, there may be offsite queueing in the afternoon as parents are likely to arrive before the school day ends. Project Condition 30 requires that the Permittee assign staff to assist with student loading operations in the parking lot and station staff on First Street and Devine Street to prevent on-street queueing.

Therefore, the subject site is adequate in size and shape to accommodate the physical structures onsite.

- f. The proposed site is adequately served:
- By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate.
 - By other public or private service facilities as are required.

Analysis: The subject site is located on North 1st Street, which is served by VTA light rail and bus lines 72 and 73. The nearest bus stop is approximately 600 feet south of the project site on North 1st Street. It is also two blocks northwest of East Santa Clara Street, which is served by multiple local and regional bus routes, and approximately 0.9 miles from Diridon Station. As discussed above, the school will provide shuttle service to and from Diridon Station at the beginning and end of the school day to serve those students taking Caltrain to get to school.

North 1st Street adjacent to the project site is a one-way street with two lanes for vehicle traffic and light rail tracks. Because North 1st Street is a light-rail corridor, "No Stopping Any Time" signs are posted on the street adjacent to the project site and for several blocks to the north and south. Per the school's Operations Plan, all student drop-off and pick-up will occur at the onsite parking lot, which has separate ingress and egress driveways on Devine Street. The site is served by all public utilities and services.

- g. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: The development is located within Downtown San José and is adequately served by all required utilities and public services. Construction activities would only result in temporary noise, vibration, and air quality impacts, and the project would be subject to the City's Standard Permit Conditions. The project's operations consist of educational and recreational services, which are compatible with the surrounding Downtown uses in the area. No significant noise, dust, vibration, or odors are associated with the operation of the school.

In regard to CEQA, the project's impacts are evaluated in the Addendum to the Downtown Strategy 2040 Final Environmental Impact Report and indicate that the project will not have significant CEQA impacts regarding noise, vibration, dust, drainage, erosion, stormwater runoff, or odor.

9. **Historic Landmark Structure Re-use Findings:** [Section 20.80.670](#) of the San José Municipal Code establishes additional required findings for re-use of a historic landmark structure, as follows:

- a. The proposed use of the historic landmark structure is compatible with and will not cause adverse impacts to the surrounding uses; and

Analysis: The project is consistent with this finding, as analyzed for Special Use Permit finding 'd'.

- b. The proposed use of the historic landmark structure will not cause adverse impacts to the historic landmark structure; and

Analysis: Hillbrook School will offer activities typical of a secondary school, including academic classes, sports programs, and extracurricular activities such as clubs and theater productions. None of these activities are expected to cause adverse impacts to the landmark structure. To enable this use, the school will undertake interior alterations, consisting largely of the removal and addition of walls to reconfigure the interior spaces. However, there will be no exterior alterations. As explained in the next finding, the changes comply with the Secretary of the Interior's Standards for the Rehabilitation of Historic Buildings.

- c. Any changes proposed to the historic landmark structure, or the site on which this historic landmark structure is located, as part of a project will comply with the United States Secretary of the Interior's Standards for the Rehabilitation of Historic Buildings ("Standards"); and

Analysis: The project will not result in any alterations to the exterior of the Moir Building, a City Landmark, or to the site. Alterations will consist only of removal of some interior walls and addition of walls to create office and classroom spaces appropriate for secondary school use.

According to the compliance review conducted by TreanorHL in December 2022, the project is consistent with the Secretary of the Interior Standards, as follows:

- *Standard 1: A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.*

Analysis: According to the TreanorHL report, the property was originally constructed for a mix of commercial and residential uses. Its conversion to secondary school use will involve only the removal and addition of interior walls and will not affect any of the defining characteristics of the building, which include brick construction with sandstone, cast iron, and wood features and a round corner tower. Therefore, the project complies with Standard 1.

- *Standard 2: The historic character of a property shall be retained and preserved. Removing historic materials or altering features and spaces that characterize a property shall be avoided.*

Analysis: As explained in the finding for Standard 1, there will be no alteration to the exterior of the building or removal of any historic materials, such that the historic character shall be retained. Therefore, the project complies with Standard 2.

- *Standard 3: Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.*

Analysis: As explained in the finding for Standard 1, the project will not create any changes to the exterior of the building. Interior changes will be limited to removal and addition of interior walls to reconfigure spaces. Therefore, the project complies with Standard 3.

- *Standard 4: Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.*

Analysis: According to the TreanorHL report, while the Moir Building has undergone minor alterations over time, none have acquired historical significance in their own right. Therefore, the project complies with Standard 4.

- *Standard 5: Distinctive features, finishes, and construction techniques or examples of fine craftsmanship that characterize a property will be preserved.*

Analysis: Per the TreanorHL report, the distinctive features and finishes of the Moir Building are on the exterior, which will not be altered by the project. Therefore, the project complies with Standard 5.

- *Standard 6: Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacements of a distinctive feature, the new feature will match the old in design, color, texture, and other visual qualities and, where possible, materials.*

Analysis: The project does not include any report of deteriorated historic features of the Moir Building. Therefore, the project complies with Standard 6.

- *Standard 9: New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property.*

Analysis: New additions consist of interior walls used to reconfigure some interior spaces and will not destroy any historic materials or features. The spatial relationships of the interior will be maintained, with the atrium at the center of the building and classrooms and offices around the perimeter. Therefore, the project complies with Standard 9.

- *Standard 10: New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.*

Analysis: New additions consist of interior walls used to reconfigure the interior spaces and their removal will not alter the essential form and integrity of the property. Therefore, the project complies with Standard 10.

- d. The proposed re-use of the historic landmark structure complies either with the Uniform Building Code or the State Historic Building Code; and

Analysis: The applicant will be required to obtain permits from the Building Division to perform the work. At that time, the plans will be reviewed for consistency with the California Building Code, as adopted by the City of San José.

- e. If the historic landmark structure is located in a residential district, the proposed re-use of the historic landmark structure will not impair the integrity of the surrounding residential neighborhood, or the surrounding area is not predominately residential in character.

Analysis: The surrounding neighborhood is predominantly a mixed-use district containing offices, institutional uses such as churches and clubs, and multifamily residential buildings.

In accordance with the findings set forth above, a Special Use Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the Permittee shall be deemed to be constitute all of the following on behalf of the Permittee:
 - a. Acceptance of the Permit by the Permittee; and
 - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the Director, if within such time period, the proposed use of the site or the construction of buildings has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is

necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Planned Development Permit plans entitled, "HILLBROOK SCHOOL MOIR BUILDING" last revised on June 16, 2023, on file with the Department of Planning, Building and Code Enforcement ("Approved Plans"), and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
7. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
8. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
9. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
10. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
11. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
12. **Utilities.** All new onsite telephone, electrical, and other service facilities shall be placed underground.
13. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
14. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage.
15. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
16. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
17. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
18. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance/approved

Planned Development Zoning, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.

19. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
20. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. The Permittee shall secure appropriate permits for any future stand-by/backup generators, which shall conform to the regulations of Title 20 of the Municipal Code.
21. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
22. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
23. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
24. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
25. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
26. **Replacement Landscaping.** All landscaping removed with the construction of the project shall be replaced with similar landscaping in the immediate area. All landscaped replacement areas shall be automatically irrigated.
27. **Fence Standards.** Fences shall be erected in accordance with the standards established in the Approved Plans. Changes to the approved fencing shall comply with Section 17.24 of the San José Municipal Code.
28. **Salvage of Historic Materials.** Surplus historic bricks and other architectural features shall be re-used where feasible in other areas of the project and for repairs within the building.
29. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The

request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

30. Use Authorization.

- a. **Term.** If the use authorized by the Special Use Permit is discontinued for a period of 12 months, the Special Use Permit will expire and will no longer be in effect.
- b. **Enrollment.** The maximum enrollment permitted at the school (including the Moir Building and the Armory Building) is 300 students.
- c. **Operational Hours.** This use shall be limited to operation between the hours of 6:00 a.m. to 12:00 a.m. (midnight), unless a Permit, as applicable, is approved by the City for other hours of operation.
- d. **Operations Plan.** The project is bound to Exhibit A: Operations Plan attached to the permit, labeled "Hillbrook School Operations Plan."
- e. **Student Drop-off and Pick-up.** The Permittee shall provide staff to assist with student loading and unloading at the locations in the on-site parking lot indicated in the project Transportation Analysis prepared by Hexagon Transportations Consultants, Inc. and dated December 14, 2022. Staff monitors shall also be stationed on First Street and Devine Street to prevent drop-off and pick-up activities from taking place offsite. Additionally, Permittee shall install an "EXIT ONLY" sign at the east driveway on Devine Street to prevent vehicle ingress.
- f. **Delivery and Loading Activity Hours.** All delivery and loading activities shall be limited to the hours of 6:00 a.m. to 9:00 p.m.
- g. **Amplified Sound.** All amplified sound shall be contained within the building and the building shall be adequately insulated to prevent sound from emanating outside.

31. Building Division Clearance for Issuing Permits. Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit file number, SP22-025, shall be printed on all construction plans submitted to the Building Division.
- b. *San Jose's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit www.sjenvironment.org/reachcode.
- c. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

e. *Other.* Such other requirements as may be specified by the Chief Building Official.

32. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2019 California Fire Code, or as may be amended or updated by the City.

33. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the issuance of Building permits, the Permittee will be required to have satisfied all of the following Public Works conditions. The Permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following:

<http://www.sanjoseca.gov/devresources>

- a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Street Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
- b. **Transportation:** A Transportation Analysis has been performed for this project. See the separate Transportation Analysis Memo dated 5/26/2023 for additional information. The following conditions shall be implemented:
 - i. Implement a Transportation Demand Management (TDM) Plan for the project VMT impact mitigation and 50% parking reduction with the included measures (but not limited to):
 - 1) Last-mile shuttles to/from Diridon Station for students;
 - 2) Private bus program serving students to the campus;
 - 3) Transit subsidy program for VTA bus/light rail transit passes to provide to all students;
 - 4) Onsite coordinator (TDM Director of Transportation);
 - 5) Annual monitoring requirement establishing an average daily trip (ADT) cap of 129 gross vehicular AM peak-hour trips and 37 gross vehicular PM peak-hour trips at project buildout;
 - 6) The annual monitoring report must demonstrate the project is within 10% of the ADT trip cap and must be prepared by a traffic engineer;
 - 7) If the project is not in conformance with the trip cap, the project may add additional TDM measures to meet the trip cap. A follow-up report will be required within six months. If the project is still out of conformance, penalties will be assessed. See Council Policy 5-1.
- c. **Grading/Geology.**
 - i. A grading permit **may be** required prior to the issuance of a Public Works clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. All onsite storm damage conveyance facilities and earth-retaining structures four feet in

- height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be approved and reviewed under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains, and inlets. The project shall provide storm drain calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.01.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- iii. The project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction **is not** required to be submitted to, revised, and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance.
 - d. Stormwater Runoff Pollution Control Measures: This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) including site design measures and source controls to minimize stormwater pollutant discharges.
 - e. Stormwater Peak Flow Control Measures: The project is located in a non-Hydromodification Management Area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
 - f. Flood Zone D: The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
 - g. Sewage Fees: In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - h. Street Improvements:
 - i. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - ii. Install a three-way stop control and a new pedestrian crosswalk at the north leg of Second Street and Devine Street intersection.
 - iii. Restripe all existing pedestrian crosswalks within 600 feet of the project sites with yellow, high-visibility continental detail markings.
 - iv. Improvement of the public streets shall be to the satisfaction of the Director of Public Works.
 - i. Downtown Transit Mall: This project is located along the Downtown San Jose Transit Mall and any public improvements necessary for the project along North 1st Street (i.e., new driveways, driveway closures, trenching, etc.) shall conform to the following:

- i. Improvements and trench work within the sidewalk will require preservation of the existing granite pavers and granite curb. If the existing granite pavers become damaged the Permittee shall be responsible to replace these pavers and should contact Eric Hon of the Department of Transportation at (408) 794-1987 or at eric.hon@sanjoseca.gov.
 - ii. The street traveled way is comprised of concrete panels and any re-grading of the curb, gutter, and any other intrusion or damage to existing panels due to construction will require the removal and replacement of the entire concrete panel(s). Improvements to the roadway will be required to conform to the "Special Provisions for Roadway Repair within the San Jose Transit Mall."
- j. Downtown Construction: This project is located within the General Plan Downtown Growth Area or the Diridon Station Area Plan and will be required to comply with the Downtown Construction Guidelines (DCG). The DCG apply to all work in the public right-of-way to support the safe and orderly movement of people and goods by providing standards. The DCG serve as guidelines related to permits, coordination, and traffic control devices to entities performing work in downtown streets. A copy of the DCG can be found at: <https://www.sanjoseca.gov/home/showdocument?id=56303>.
- k. Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures): At the implementation stage, the Permittee shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
- i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
 - 1) Site Utilization Plan and Letter of Intent: The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (ex. Swinging loads over the sidewalk are not safe for pedestrians).
 - 2) Multi-Phased Site Specific Sketches: These sketches should show the phased closures during the course of construction with a timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
 - ii. Permittee shall minimize the potential impact to vehicular and pedestrian traffic by:
 - 1) Implementing the closures at the time the onsite activities dictate the need for the closure.
 - 2) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition i.2. above.

- iii. If the proposed lane and parking closures are part of the Revocable Permit application, Permittee shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/?navid=1629>. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- l. Sanitary: If proposed, the project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
- m. Greater Downtown Area Master Plans: This project is located within the Greater Downtown area. Public improvements shall conform to the Council-approved San Jose Downtown Streetscape and Street and Pedestrian Lighting Master Plans.

35. Standard Environmental Permit Conditions

- a. **Air Quality.** The project applicant shall implement the following measures during all phases of construction to control dust and exhaust at the project site.
 - i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
 - ii. Cover trucks transporting soil, sand, or other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
 - iii. Remove visible mud or dirt track-out onto adjacent public roads by using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
 - v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
 - vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
 - vii. Limit all vehicle speeds on unpaved roads to 15 mph.
 - viii. Replant vegetation in disturbed areas as quickly as possible.
 - ix. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - x. Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to five minutes (as required by the California Airborne Toxics Control Measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
 - xi. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. A certified mechanic shall check all equipment prior to operation to determined that equipment is running in proper operating condition.
 - xii. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

- b. **Santa Clara Valley Habitat Plan (SCVHP).** The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form ((<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=>) to the Director of PBCE or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The SCVHP and supporting materials can be viewed at www.scv-habitatplan.org.
- c. **Cultural Resources**
- i. **Subsurface Cultural Resources.** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area, as described in Public Resources Code Section 21080.3, shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. **Human Remains.** If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:
- 1) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
 - 2) The MLD identified fails to make a recommendation; or

- 3) The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to provide measures acceptable to the landowner.
- iii. **Paleontological Resources.** If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement.
- d. **Geology and Soils.** To minimize potential direct or indirect damage from seismic shaking on the project site, the project would include the following measures:
 - i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
 - ii. All excavation and grading work shall be scheduled in dry weather months or construction sites will be weatherized.
 - iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
 - iv. Ditches shall be installed, if necessary, to divert runoff around excavations and graded areas.
 - v. If dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.
- e. **Hazards and Hazardous Materials.**
 - i. Asbestos and Lead-Based Paint. The project shall incorporate the following measure to ensure that asbestos containing materials and lead-based paint are not released during demolition:
 - ii. In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of onsite building(s)

- to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
- iii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
 - iv. All potentially friable ACMs shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
 - v. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
 - vi. Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- f. **Hydrology and Water Quality.** Construction-related water quality.
- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
 - ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
 - iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust, as necessary.
 - iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
 - v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall be required to maintain at least two feet of freeboard.
 - vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
 - vii. Vegetation in disturbed areas would be replanted as quickly as possible.
 - viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
 - ix. The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

36. **Revocation, Suspension, Modification.** This Site Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **19th day of July, 2023.**

Christopher Burton, Director
Planning, Building, and Code Enforcement

Deputy